

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 01-455-A
)	
ZACARIAS MOUSSAOUI)	
a/k/a "Shaqil,")	
a/k/a "Abu Khalid)	
al Sahrawi,")	
)	
Defendant.)	

ORDER

Before the Court is the defendant's pro se Motion to Know How the United States is Lying to Murder Me By "Legal" Means (Docket #821), in which he requests a copy of the transcript of the January 30, 2003 hearing reflecting the Government's view of the defendant's role in the charged conspiracies.¹ The transcript ultimately provided to Mr. Moussaoui was heavily redacted because United States' intelligence officials claim that any discussion of the subjects at issue implicates national security.

The United States opposes the defendant's motion arguing

¹ Although the defendant was not present at the January 30, 2003 hearing because classified information was discussed, the transcript was submitted for a classification review so that an appropriate version could be provided to the pro se defendant. The Court's Memorandum Opinion of March 10, 2003 received the same treatment. Upon his review of both the transcript and the Memorandum Opinion, the defendant correctly identified a substantive inconsistency between how the transcript and the Memorandum Opinion were redacted. Specifically, although all references to the Government's theory of the case were redacted from the defendant's copy of the transcript, a similar reference to the same theory was not redacted from his copy of the Court's Memorandum Opinion.

that the indictment in this case provides Mr. Moussaoui with "ample notice" of the charges against him. The Government further contends that the defendant's request should be denied because he is not entitled to either classified information or "a preview of the Government's theory in this case."

Standby defense counsel support the defendant's motion. They argue that the Government's disclosure of its "fifth plane" theory was not a revelation of classified information that can be shielded from the pro se defendant; instead, it was a tactical decision made in the context of its effort to defeat certain defense motions. Moreover, because Mr. Moussaoui would have been present at the January 30, 2003 hearing had classified information not been discussed, standby counsel contend that the defendant must be given immediate access to the relevant portions of the transcript "so that he can make use of that information in CIPA §6(c) proceedings and in subsequent proceedings in this case."²

The Government's general argument is correct. Ordinarily, a criminal defendant does not have a right to a preview of the prosecution's theory of its case. That argument is unpersuasive here, however, because the United States voluntarily disclosed its theory of the defendant's role in the charged conspiracies at

² Because standby counsel have filed a memorandum in support of the defendant's motion, his pro se Motion to Force Dunham to Speak Out on United Satan "Redaction to Cover Their Lies" (Docket #838) is DENIED as moot.

the January 30, 2003 hearing. Having disclosed that theory and its supporting facts to standby counsel, unless the Government can justify treating that theory and its supporting facts as classified, it must also share them with the pro se defendant.³ To refuse to do so would undermine Mr. Moussaoui's ability to mount his pro se defense, and further erode standby counsel's ability to be of any assistance. Accordingly, the defendant's motion is GRANTED; and it is hereby

ORDERED that, in light of this ruling and the Government's April 25, 2003 limited disclosure to the defendant, the United States resubmit both the transcript of the January 30, 2003 hearing and the Court's Memorandum Opinion of March 10, 2003 for a classification review to arrive at appropriate versions that can be disclosed to Mr. Moussaoui.⁴

A closed hearing pursuant to 18 U.S.C. App. 3 § 6 is scheduled for Wednesday, May 7, 2003. Given the Fourth Circuit's explicit instruction that the defendant participate in this process, and the United States' compliance with our Order of April 24, 2003, Mr. Moussaoui will be present at the hearing unless the Government advises the Court by Wednesday, April 30, 2003 of a legitimate reason to exclude the defendant.

³ The prosecution's theory alone cannot be classified.

⁴ To the extent that the transcript and Memorandum Opinion remain classified, copies may still be disclosed to the defendant under the limited disclosure procedures already used several times in this case.

The Clerk is directed to forward a copy of this Order to the defendant, pro se; counsel for the United States; standby defense counsel; and the Court Security Officer.

Entered this 28th day of April, 2003.

/s/

Leonie M. Brinkema
United States District Judge

Alexandria, Virginia